

MINUTES OF THE OPEN SESSION

OF THE RHODE ISLAND ETHICS COMMISSION

May 1, 2012

The Rhode Island Ethics Commission held its 7th meeting of 2012 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, May 1, 2012, pursuant to the notice published at the Commission Headquarters, the State House Library, and electronically with the Rhode Island Secretary of State.

The following Commissioners were present:

Ross Cheit, Chair John M. LaCross
Deborah M. Cerullo SSND, Vice Chair John D. Lynch, Jr.**
J. William W. Harsch, Secretary Edward A. Magro
Mark B. Heffner* James V. Murray

Also present were Edmund L. Alves, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Staff Attorneys Jason Gramitt, Nicole B. DiLibero and Amy C. Stewart; and Commission Investigators Steven T. Cross, Peter J. Mancini and Gary V. Petrarca.

At 9:01 a.m. the Chair opened the meeting. The first order of

business was a motion to approve minutes of the Open Session held on April 17, 2012. Upon motion made by Commissioner Magro and duly seconded by Commissioner Cheit, it was

VOTED: To approve the minutes of the Open Session held on April 17, 2012.

AYES: Edward A. Magro; J. William W. Harsch; Ross Cheit.

ABSTENTIONS: James V. Murray; John D. Lynch, Jr.; John M. LaCross.

The next order of business was a Financial Disclosure, Online Filing Update. Staff Attorney Gramitt stated that as of this morning there were 1456 online filings and 923 paper filings. He stated that online filings alone had a compliance rate of 40%, and together with paper filings the overall compliance rate is 65%. He noted that these figures are consistent with previous filing years and that the online filing numbers exceeded expectations.

Chair Cheit commented that he found online filing to be easy. He stated that he was satisfied with the process and the fact that the filer receives a PDF of their completed statement. In response to Commissioner Harsch, Staff Attorney Gramitt stated that the staff receives requests to view financial disclosure statements almost on a daily basis. He explained that some requests may be for a single

filing year or to view all of the financial disclosure statements for a particular public official.

Discussion ensued regarding the availability of the General Officers' and General Assembly members' financial disclosure statements on the Commission's website. Staff Attorney Gramitt informed that due to the change in the form of online filings, the staff needs to develop a new way to post these statements to the internet. Chair Cheit opined that the Commission should, upon developing a way to post the statements, maintain the status quo as to the website availability of the General Officers' and General Assembly members' financial disclosure statements. Commissioner Harsch concurred with Chair Cheit.

The next order of business was a Legislative Update. Staff Attorney Gramitt stated that there was nothing new to report and that the three bills relating to the Ethics Commission have been held for further study.

The next order of business was the Director's Report. Executive Director Willever reported that there are five (5) complaints, two (2) advisory opinions, and one (1) litigation matter pending. He also stated that six (6) APRA requests were granted since the last meeting.

***Commissioner Heffner arrived at 9:10 a.m.**

****Commissioner Cerullo arrived at 9:11 a.m.**

The next order of business was a public hearing on, and motion to adopt, proposed regulatory amendments to Commission Regulation 36-14-5002 (“Regulation 5002”) – “Additional Circumstances Warranting Recusal.” Staff Attorney Gramitt informed that the Commission recently amended subsection (a) of Regulation 5002. He stated that before the Commission today were two exceptions arising out of the advisory opinion context. He summarized subsections (b)(1) and (b)(2). He noted that the staff’s research indicates that this is the least burdensome approach and there is no overlap or duplication with another regulation. He stated that he submitted the regulation to the Economic Development Corporation’s small business advocate and there was no indication that this regulation would have an adverse impact.

Staff Attorney Gramitt explained that, if this amendment is adopted today, the amended regulation will be filed with the Secretary of State and become effective twenty (20) days after filing. He noted that the Commission advertized for over a month for public written comment, posting the notice on the Commission’s website, with the Secretary of State and sending the notice via email to the list of people and organizations that regularly receive our agenda. He informed that the Commission did not receive any written comment.

Chair Cheit opened the floor for public comment. John Marion, of Common Cause Rhode Island, was the only person who signed up to

Mr. Marion informed that he received the notice of rulemaking and believed that it was properly advertised. He stated that he has followed the various iterations of the Regulation 5002(b) amendments. He recalled the Tiverton advisory opinions and stated that subsection (b)(1) adequately addresses those concerns. With respect to subsection (b)(2), he inquired as to the definition of “general public interest.” Staff Attorney Gramitt stated that “general public interest” is used in another section of the Code and has been previously construed by the Commission in advisory opinions related to the public forum exception. Mr. Marion concluded by stating that he was pleased that the Commission recognizes and amends the Code where common sense may contradict the application of a rule. Commissioner Cerullo stated that after considering the amendments proposed for Regulation 5002 and the public comment received, she moved that the Ethics Commission find: that there was no alternative approach to the amended regulation which would be as effective and less burdensome to affected private persons; that no other state regulation which is overlapped or duplicated by this proposed amended regulation has been identified; that no indication that the amended regulation would have a significant economic impact on small business has been received; and that Amended Regulation 5002 be adopted. Upon motion made by Commissioner Cerullo and duly seconded by Commissioner Harsch, it was unanimously

VOTED: To adopt the proposed amendments to Regulation 5002 – “Additional Circumstances Warranting Recusal.”

At approximately 9:23 a.m., upon motion made by Commissioner Magro and duly seconded by Commissioner Harsch, it was unanimously

VOTED: To go into Executive Session, to wit:

a) Motion to approve minutes of Executive Session held on April 17, 2012, pursuant to R.I. Gen. Laws § 42-46-5(a) (2) and (4).

b) Joseph S. Larisa, Jr. v. Rhode Island Ethics Commission et al., C.A. No. PC 11-6938, pursuant to R.I. Gen. Laws § 42-46-5(a)(2).

The Commission reconvened in Open Session at approximately 9:27 a.m.

The next order of business was a motion to seal the minutes of the May 1, 2012 Executive Session. Upon motion made by Commissioner Magro and duly seconded by Commissioner Murray, it was unanimously

VOTED: To seal the minutes of the May 1, 2012 Executive Session.

Chair Cheit reported that the Commission took the following actions

in Executive Session:

1) Voted to approve the minutes of the Executive Session held on April 17, 2012.

[Reporter's Note – The vote was as follows:

AYES: Mark B. Heffner; J. William W. Harsch; Edward A. Magro; Deborah M. Cerullo; Ross Cheit.

ABSTENTIONS: James V. Murray; John M. LaCross; John D. Lynch, Jr.]

2) Briefly discussed the litigation matter, Joseph S. Larisa, Jr. v. Rhode Island Ethics Commission et al., C.A. No. PC 11-6938.

The next matter was an adjudicative hearing in the matter of In re: Alisa Trainor Fleet, Complaint No. NF2011-10. The hearing was stenographically recorded and a transcript of the proceeding is available at the Commission Offices. Commission Prosecutor Nicole B. DiLibero represented the People of the State of Rhode Island. The Respondent, Alisa Trainor Fleet, was not present.

Commission Prosecutor DiLibero gave an opening statement. She presented the Commission with Exhibit 1, the affidavit of Michelle Berg, Ethics Commission Administrative Officer in charge of Financial Disclosure, along with five (5) attachments. Exhibit 1 was admitted as a full Exhibit. Commission Prosecutor DiLibero gave a

closing argument.

The Commission questioned Commission Prosecutor DiLibero. The Commission deliberated in open session. Upon motion made by Commissioner Murray and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To find that the Respondent, Alisa Trainor Fleet, violated R.I. Gen. Laws § 36-14-16 by failing to timely file a 2010 Financial Disclosure Statement.

Commission Prosecutor DiLibero suggested a \$1500 penalty for this finding of a violation and also asked the Commission to issue an order requiring the Respondent to file a 2010 financial disclosure statement. The Commission deliberated in open session. Upon motion made by Commissioner Heffner and duly seconded by Commissioner Murray, it was unanimously

VOTED: To issue an order:

- 1. Imposing a fine of \$1500 on the Respondent for failing to timely file her 2010 Financial Disclosure Statement; and**
- 2. Requiring the Respondent to file a 2010 Financial Disclosure Statement.**

The next order of business was New Business. In response to

Commissioner Harsch, Legal Counsel Alves stated that under the Open Meetings Act and according to the Attorney General's Office, sealed executive session minutes are permanently sealed until the Commission votes to unseal such minutes. Staff Attorney Gramitt stated that he agreed with Legal Counsel Alves and noted that he had been similarly advised by the Attorney General's Office.

Commissioner Harsch inquired if the Open Meetings Act requires the Commission to take a vote before changing the order of the agenda. Legal Counsel Alves stated that he would look into it. Chair Cheit stated that he is in favor of following procedures and would endeavor to clarify why the order of the agenda is changing.

Chair Cheit noted that he had asked the Executive Director to regularly report the status of APRA requests to the Commission a few years ago. He stated that the Executive Director's report shows the Commission to be responsive and accommodating in its processing of APRA requests.

At 9:55 a.m., upon motion made by Commissioner Magro and duly seconded by Commissioner Lynch, it was unanimously

VOTED: To adjourn.

Respectfully

submitted,

Harsch

J. William W.

Secretary